formed from a nylon stocking material and is filled to maintain a round shape when removed from the container.

REMARKS

Claims 1 through 5 remain in the case after this amendment.

Applicant notes the final rejection of Claims 1 through 5 citing 35 USC 103(a), citing U.S. Patent No. 4,124,953 to Patton in view of U.S. Patent No. 5,421,123 to Sakate et al. Applicant respectfully takes except to this rejection on the basis that item #30 of patent is not a sack, nor is the mat of Sakate et al. Rather, as set out at column 2, lines 59 and 60 of Patton, it is "A dry, compressed growing medium in the form of a pellet 30 is disposed in a space 28". Which space 28, at column 2, line58, is a "defined space" formed cover 20 bottom 22 positioning above the base 14", as set out at column 2, lines 49 - 59. Which space receives the compressed pellet of growth medium that, as set out at column 2, line 61 is, "a dry, compressed peat, containing fertilizer". Further, while the compressed pellet of growth medium #30, as set out at column 2, lines 67 and 68 and column 3 first line, is "surrounded by an expansible netting which holds the peat together after soaking and expansion" the netting does not enclose seeds. Rather, unlike the invention as now clearly claimed in Claim 1, as set out in Patton at column 3, lines 7 and 8, "the upper surface of the pellet 30 has a recess 32 in which seeds 34 are deposited". While, of course, netting is mentioned as covering the growth medium #30, it is not shown, but from the description it is clear that the seeds rest on the netting in recess 32 and root through the netting and into the growth medium #30. Similarly, Sakate, et al. teaches a mat that, while the mat contains vegetation material and seeds, such is for laying out on a ground surface, the mat providing for holding the seeds in place while they germinate

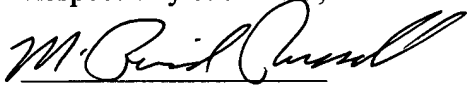
with the seeds first receiving nourishment from the vegetation material until their roots projecting into soil below the mat. Certainly Sakate, et al. does not teach a container garden like that of the invention. Applicant, to more clearly point out and claim the subject matter of the invention as is distinct from a reasonable combination of the Patton and Sakate et al. references, here proposes to further amend Claims 1 and 2 of the case, adding further limitations to the sack as being formed to fit within the container but be removable for turning in the containing and as a pet toy. Clearly, neither the pellet of Patton nor the mat of Sakate et al., once germination has begun is removable as is the sack of the invention as now called for. Which feature is, in addition to being distinct from these reference, provides a functional change adding to its utility.

The invention, as now clearly called for with the amendments to Claims 1 and 2 now clearly sets out that the growth medium and mix of seeds are contained in a closed pouch of a size to both fit in the container and be removable therefrom, with the seeds to sprout through the mesh material of the pouch. This arrangement of the invention provides for its utility in that as seedlings are grazed off from a section of the pouch material, the pouch is rotated to provide added grazing for a pet, and can even be removed to provide a cat toy. This structure and function is clearly unlike that of the Patton patent that is a planter for protecting a live plant for transport and display with the plant start intended to be removed and planted soil. Clearly, the kit and package of the Patton patent is not and cannot perform a function like that of the invention. Nor, of course, can the mat of the Sakate et al. patent provide this function. Accordingly, a reasonable combination of the Patton and Sakate et al. and the Melvold patents does not anticipate the invention.

As set out above, with this amendment, applicant believes their Claim 1 and Claim 2

dependent thereon, now clearly sets out the invention that is distinguished, as set out above, from a reasonable combination of the structure of the Patton and Sakatel et al. and including the Melvold patents, overcoming, applicant believes, the 35 USC 103(a) rejection of Claims 1 through 5. Accordingly, with the entry of the proposed amendments here made to Claim 1 and 2 that are clearly within the disclosure and the arguments here presented, applicant believes that Claim 1, the sole independent claim of the case, and the claims dependent thereon, Claims 2 through 5 should now be in condition for allowance and respectfully requests same.

Respectfully submitted,



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